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# Joining Forces: The Role of Collaboration in the Development of Legal Thought

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# Joining Forces: The Role of Collaboration in the Development of Legal Thought

Tracey E. George and Chris Guthrie

Hart and Sacks. Warren and Brandeis. Calabresi and Melamed. Landes and Posner. Mnookin and Kornhauser. Farber and Sherry. From introducing the legal process school<sup>1</sup> to formulating the idea of privacy rights;<sup>2</sup> from bringing economic analysis to bear on law and legal theory<sup>3</sup> to delineating the distinction between property rights and liability rules;<sup>4</sup> from posing a new way of thinking about the behavior of disputants<sup>5</sup> to questioning the merits of legal storytelling as a method of scholarly discourse;<sup>6</sup> collaboration *appears* to have played a significant role in the development of law and legal scholarship. But has it?

We certainly have reason to believe that collaboration has been influential. Many prominent legal scholars, like those mentioned above, have participated in fruitful and highly visible collaborations. And legal scholars have made a practice of collaborating on more practically oriented works, like treatises, casebooks, student study aids, and amicus briefs.<sup>7</sup> This tradition of

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1. Henry M. Hart Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, 10th ed. (Cambridge, Mass., 1958).
2. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 *Harv. L. Rev.* 193 (1890).
3. See, e.g., William M. Landes & Richard A. Posner, *The Economic Structure of Tort Law* (Cambridge, Mass., 1987).
4. Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 *Harv. L. Rev.* 1089 (1972).
5. Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 *Yale L.J.* 950 (1979).
6. See, e.g., Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *Stan. L. Rev.* 807 (1993).
7. For example, Fred R. Shapiro found that 11 of the 20 most-cited legal treatises and texts are coauthored. *The Most-Cited Legal Books Published Since 1978*, 29 *J. Legal Stud.* 397, 404 Table 2 (2000).

coauthoring suggests that there is a “collaboration norm” in the legal academy. Moreover, legal academics are members of the legal profession, and the practice of law is collaborative. Partnerships and firms dominate; multiple attorneys participate in the drafting of legal papers; clients often arrive in court with more than one attorney at their side; and so on.

For every reason to believe that collaboration has been influential, however, there is a countervailing reason to believe that it has played a minor role in the evolution of legal thought. It may be easy to bring to mind a handful of prominent collaborations, but most law review articles seem to be written by one author (notwithstanding their lengthy acknowledgment footnotes, suggesting that even single-author works are shaped by the insights and input of multiple scholars). And while it is true that legal scholars often collaborate on their practically oriented works, scholarly articles might not be well suited to collaboration. Legal scholars who seek to make uncompromising normative arguments may find that they, and they alone, hold the particular views they are advancing. Likewise, legal scholars who employ deeply personal narratives in their scholarship may find coauthorship infeasible. Finally, there are practical impediments to collaboration in law schools that may not exist in law practice. For example, law schools often give faculty only token credit for coauthored works.

In the absence of empirical evidence and in the face of conflicting intuitions, there is no way to assess the relevance of collaborative work to the development of law and legal scholarship. In this essay we seek to fill this gap in our legal intellectual history by assessing the role collaboration has played in the past, speculating about the role it will play in the future, and making recommendations about the role that the legal academy can play—and we believe should play—in facilitating collaboration. This essay, then, is part description, part prediction, and part prescription.

Part I is the descriptive part. In it we take a careful look at collaborative work in legal scholarship by providing detailed, systematic evidence on its rate and impact during the last three decades of the twentieth century. Despite the prominent names identified at the beginning of the essay, we reach the conclusion that collaboration has *not* played a very significant role in the development of legal thought, particularly when compared to collaborative work in related social science disciplines. In part II we acknowledge that collaboration’s past may be its prologue, but we also make the case that collaboration will play a more prominent role in the future. Finally, in part III, we identify some of the unique benefits of collaborative work and prescribe various steps that we believe the legal academy should take to facilitate collaboration.

### **I. Collaboration in Legal Scholarship**

We introduced collaboration as though it were a single phenomenon, but there are actually several ways to think about it. In one sense all legal scholarship is collaborative because any idea that a legal scholar advances is inevitably built upon ideas previously advanced by other scholars. As James E. Krier and

Stewart J. Schwab observed when considering the influence leading economists had on the famous Calabresi and Melamed article, “Nothing comes from nowhere.”<sup>8</sup> In other words, all legal scholarship is a product of what we might call *derivative collaboration*. Most legal scholarship is also collaborative in another way. Law review articles almost always reflect not only the insights of a primary author, but also the insights of colleagues and friends who have helped the author develop her ideas and her manuscript. Indeed, in some disciplines, this level of involvement in a scholarly work could very well result in coauthorship credit.<sup>9</sup> In legal scholarship, however, this type of involvement results in what we might call *participatory collaboration*. Fewer articles reflect the third and final form of collaboration, which we might call *partnership collaboration*. In this form, two or more scholars work together as coauthors. This third form of collaboration is the focus of this essay.

We set out to assess the role of partnership collaboration in law and legal scholarship by first measuring the frequency with which it has occurred. We gathered data on articles published in elite law reviews, non-elite law reviews, and leading journals in other disciplines, to assess the rate of collaboration in law and its companion disciplines. After examining the rate of collaboration, we attempted to assess its impact on legal scholarship by analyzing available citation-count data. Based on our analyses of both the rate of collaboration and its apparent impact, we reach the conclusion that collaboration has played a rather modest role in the development of legal scholarship.

#### A. *The Rate of Collaboration in Legal Scholarship*

One way to measure the significance of any phenomenon is to determine how often it occurs. To measure the rate of coauthorship in legal academia, we looked at two different groups of legal journals: law reviews published by elite law schools and law reviews published by non-elite law schools. For the first group we collected information on all regular articles<sup>10</sup> published in every issue of five elite law journals—Chicago, Columbia, Harvard, Stanford, and Yale<sup>11</sup>—from 1970 through 1999.<sup>12</sup> For the second group we collected data on

8. *The Cathedral* at Twenty-five: Citations and Impressions, 106 Yale L.J. 2121, 2134 (1997).

9. Cf. Kim A. McDonald, Physicists in Large Collaborations Find That ‘Big’ Is Not Always Better: Longer and More Bureaucratic Experiments Frustrate Many Young Researchers, *Chron. Higher Educ.*, Dec. 9, 1992, at A7, A7 (describing some physicists’ frustration with the practice of listing everyone ever associated with a project or lab as a coauthor on a paper, resulting in “the names of 300 or 400 co-authors regularly appear[ing] on their research papers”).

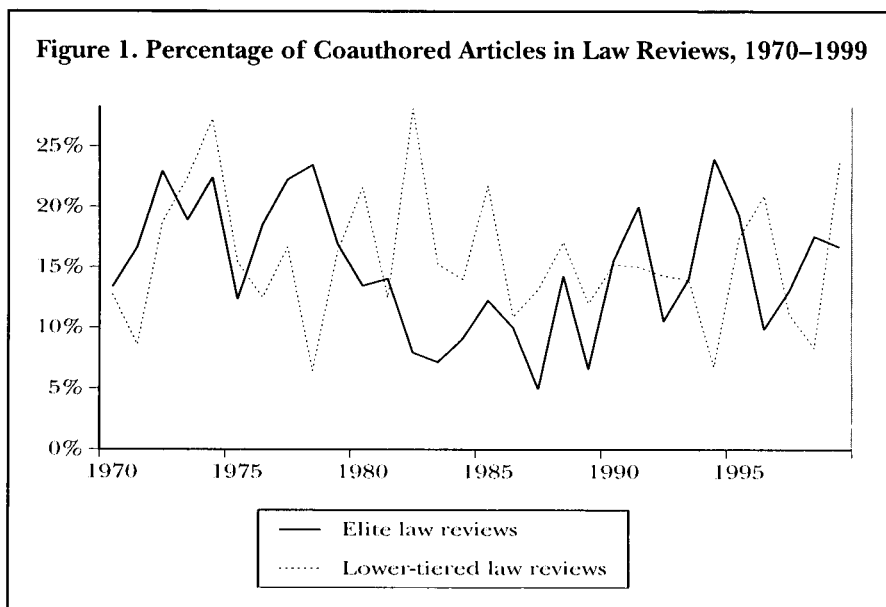
10. We do not include symposia, speeches, comments, essays, notes, or book reviews.

11. We wanted to collect data that we could use for comparison to the leading publications in other disciplines. These five elite journals publish approximately the same number of articles annually as the leading journal in other fields.

12. These are volume-years. A volume-year is the year in which a volume *begins* publication. For journals published on a calendar-year schedule, all issues of one volume are published in the same year. For journals published on an academic-year calendar, all issues of one volume are published over two years. We treat the later group as published in the first year (e.g., the 1999 volume-year is the 1999–2000 volume).

articles appearing in a random sample of law review volumes published during that same period by schools in the lower tiers of the *U.S. News and World Report* ranking.<sup>13</sup> All told, we collected data on nearly 3,000 articles.

We found that 253 of the 1,699 articles published in the five elite reviews during this period were written by at least two authors, ranging from a low of 5 percent in 1987 to a high of 24 percent in 1994. Similarly, we found that 199 of the 1,251 articles<sup>14</sup> in our sample of non-elite law reviews were coauthored, ranging from 6 percent in 1978 to 28 percent in 1982. Although the rate of coauthorship varied substantially from year to year in both the elite and the non-elite journals, we found an average annual rate of 15 percent in elite as well as non-elite journals.<sup>15</sup>

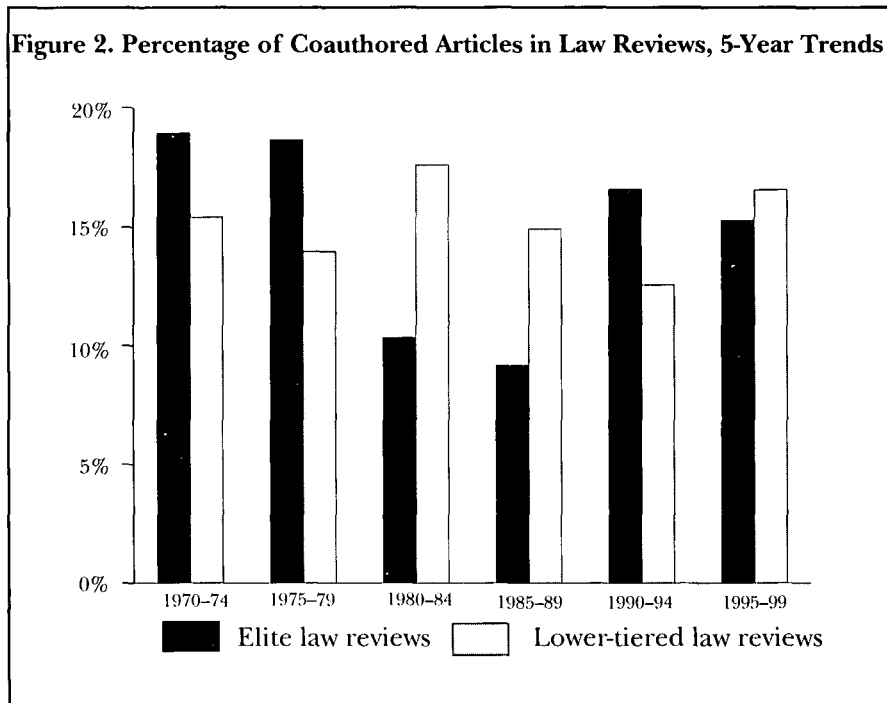


13. We constructed our lower-tier dataset using a stratified random sample strategy. For each volume-year, we randomly selected two law schools from each of the three lower tiers. (The tiers are from the 1999 ranking of *U.S. News and World Report*.) We then coded all articles in all issues of the chosen law schools' primary journal for the given volume-year. Because each volume-year was treated separately, a journal could have been selected in multiple years. For each year, we excluded law schools that did not publish a nonspecialized journal during that year. For example, Widener Law School publishes the *Delaware Journal of Corporation Law* rather than a general law journal.

14. Because lower-tiered journals generally publish fewer issues per volume than the elite journals, the number of articles in our random sample is lower than the number in our elite group, although the number of non-clite journals examined in each year is higher (six compared to five elite).

15. The median for non-elite journals is 14.6 percent and for elite journals is 14.2 percent. For the entire 30-year period, slightly more than 15.3 percent of articles in non-elite journals had coauthors, compared to 14.9 percent in elite journals.

As illustrated in Figure 1, there does not appear to be a discernible trend in the rate of collaboration in either sample of reviews. But Figure 1 may be misleading. It depicts the rate of coauthorship on an annual basis, but in any given year law reviews publish only a handful of articles. (On average, the five elite journals together published only 57 articles per year during the period of our study). By focusing on annual publication rates, Figure 1 may obscure a trend in the data.



To correct for this, we decided to examine the rate of coauthorship during five-year periods from 1970 to 1999. As Figure 2 demonstrates, however, there still does not appear to be an upward or downward trend in the rate of coauthorship in law reviews. Throughout the thirty-year period of our study, collaborative articles consistently accounted for less than 20 percent of the total articles published. In the elite reviews coauthored articles were most common during the 1970-74 time period, constituting 18.9 percent of the total number of articles published, and least common during the 1985-89 time period, when only 9.2 percent were coauthored. Lower-tier journals hit their peak in 1980-84, with a 17.6 percent rate of coauthorship, and their trough in 1990-94, with a coauthorship rate of 12.6 percent.

#### *B. The Rate of Collaboration in Legal Scholarship Versus Other Disciplines*

The Langdellians believed that law was an autonomous discipline, but most modern legal scholars perceive law and legal scholarship as an amalgam of the

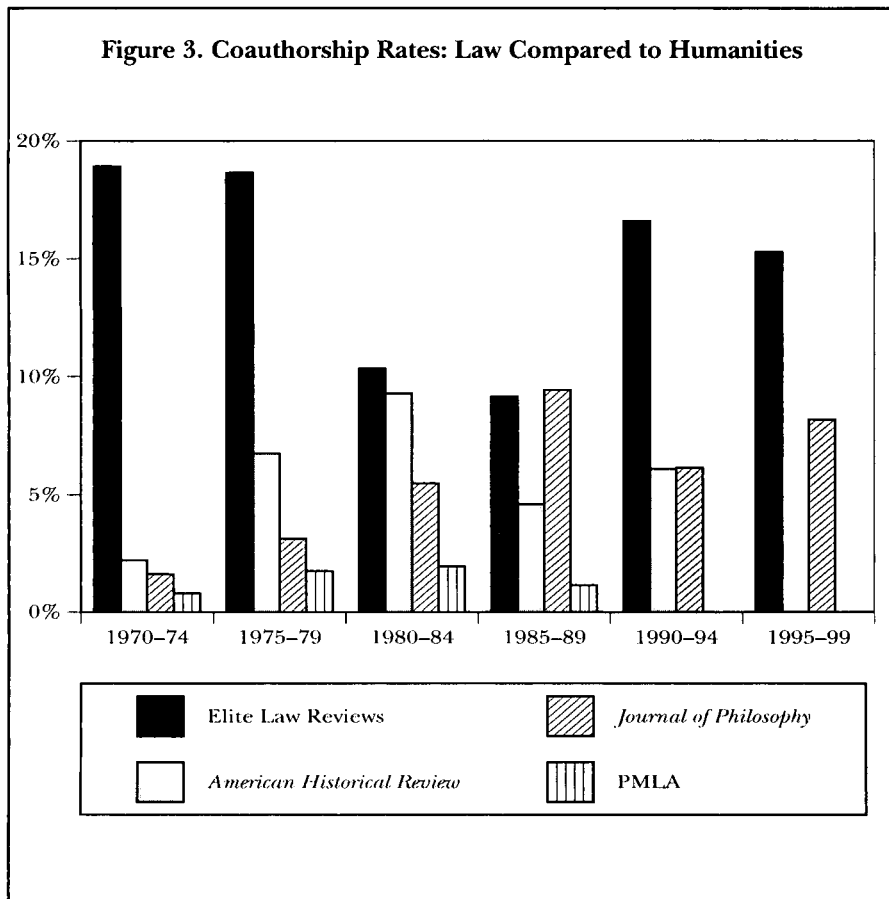
humanities and social sciences. Most law schools employ at least some faculty with Ph.D.s in the humanities and social sciences, and legal scholarship draws heavily on scholarly work in these areas. Indeed, several influential jurisprudential movements are inextricably linked with other disciplines—law and economics, behavioral law and economics, law and psychology, law and society, legal history, and law and literature.

Given that legal scholarship often employs the substance and methods of other disciplines, we decided to compare the rate of coauthorship in law to the rate of coauthorship in other fields as a way of evaluating the rate of collaboration in legal scholarship. To that end, we looked at the top journal (or one of the top) in each of three humanities fields (history, literature, and philosophy) and each of four social science fields (economics, political science, social psychology, and sociology).<sup>16</sup> Specifically, we recorded the number of coauthored regular articles published in every issue of every volume of the *American Economic Review*,<sup>17</sup> *American Historical Review*,<sup>18</sup> *American Political Science Review*,<sup>19</sup> *American Sociological Review*,<sup>20</sup> *Journal of Personality and Social Psychology*,<sup>21</sup> *Journal of Philosophy*,<sup>22</sup> and *PMLA: Publication of the Modern Language*

16. We selected one scholarly periodical from each discipline based on statements made by scholars in these fields (in discussion and print), consideration of the history and origin of various journals in each field, and the stated mission of each journal.
17. *AER* was first published by the American Economics Association in 1911 and is consistently ranked among the best economics journals in the United States. See American Economics Review, About AER, at <<http://www.acaweb.org/aer/>> (last visited Jan. 2, 2003); David N. Laband & Michael J. Piette, The Relative Impacts of Economics Journals: 1970–1990, 32 *J. Econ. Lit.* 640, 644 Table 1 (1994).
18. The American Historical Association explains on its Web site that it “publishes the *American Historical Review*, the major historical journal in the United States. It includes scholarly articles and critical reviews of current publications in all fields of history. Founded in 1884 and chartered by Congress in 1889, its mission is to engage the interests of the entire discipline of history.” American Historical Association, American Historical Review Facts, at <<http://www.historycooperative.org/ahr/ahrfacts.html>> (last visited Jan. 2, 2003).
19. *APSR* is the longest-running political science journal (first published in 1906) and is published by the largest organization of American political scientists, the American Political Science Association. See American Political Science Association, About the APSA, at <<http://www.apsanet.org/about/>> (last visited Jan. 2, 2003). It is ranked as one of the most important journals in the field. Michael W. Giles et al., Political Scientists’ Journal Evaluations Revisited, 22 *PS: Pol. Sci. & Pol.* 254 (1989).
20. The American Sociological Association first published *ASR*, its flagship journal, in 1936. American Sociological Review, Homepage, at <<http://www.pop.psu.edu/ASR/asr.htm>> (last visited Jan. 2, 2003). See also Bonnie S. Fisher et al., Trends in Multiple-Authored Articles in Criminology and Criminal Justice: A Comparative Disciplinary Analysis, 9 *J. Crim. Just. Educ.* 19 (1998).
21. The American Psychological Association, the world’s largest organization of psychologists, publishes *JPS*, a journal that focuses on social psychology and personality. American Psychological Association, JPS Description, at <<http://www.apa.org/journals/psp/description.html>> (last visited Jan. 2, 2003). See also Daniel E. Burgard, Journals of the Century in Psychology, 39(3) *The Serials Librarian* 41 (2001); Julie Cohen, APA Publishes 13 of the Century’s Top 28 Psychology Journals, *Monitor on Psych.*, Nov. 2001, available at <<http://www.apa.org/monitor/nov01/topjournals.html>> (last visited Jan. 2, 2003).
22. *JPhil* was founded in 1904 and has been continuously published from Columbia University since that time. *Journal of Philosophy, Purpose and History*, <<http://www.journalofphilosophy.org/purposcandhistor.html>> (last visited Jan. 2, 2003). This is the only nonlegal journal in our study that is not published by the major academic association in



Association<sup>23</sup> from 1970 through 1999. We ultimately collected information on more than 12,000 articles.



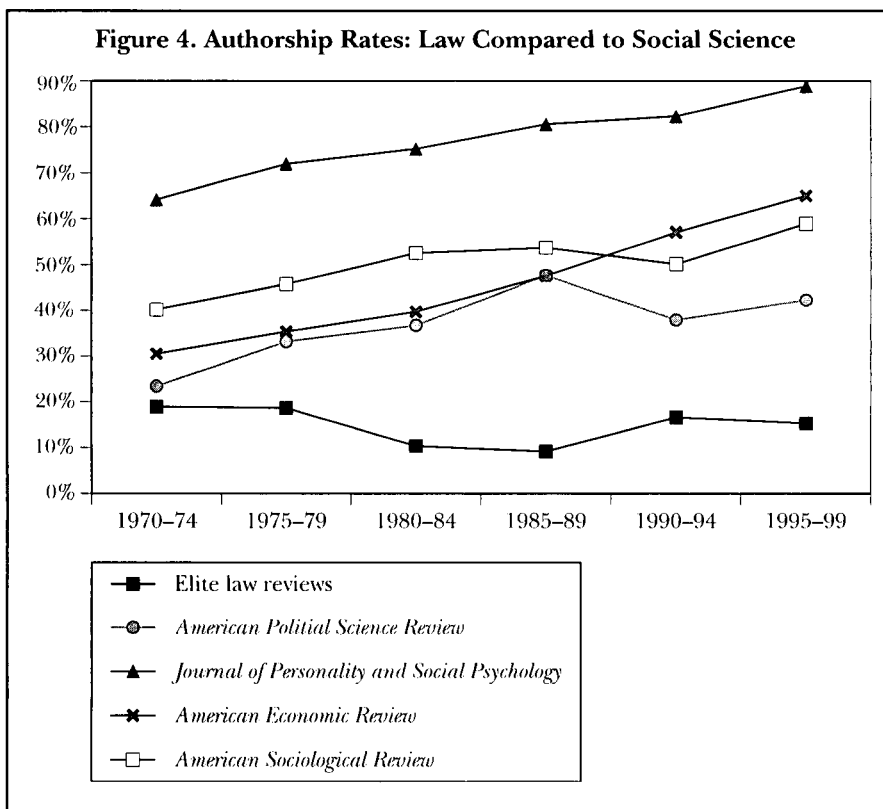
During the period of our study, legal scholars collaborated more frequently than their brethren in the humanities, as demonstrated in Figure 3. Historians and philosophers collaborated occasionally; roughly 5.8 percent of *American Historical Review* articles and 6.3 percent of *Journal of Philosophy* articles in our sample were written by two or more authors. Only once during that thirty-year period did either journal publish more collaborative articles than the top law reviews (9.4 percent of *Journal of Philosophy* articles had coauthors in 1985–89 compared to 9.2 percent of elite law review articles during the same period). Coauthorship was even less common among literary critics and scholars.

the field. The American Philosophy Association, the primary organization of philosophers in the U.S., publishes its division’s annual proceedings but does not publish a submission-based journal. American Philosophy Association, Guide, at <<http://www.apa.udel.edu/apa/APAGuide.html>> (last visited Jan. 2, 2003).

23. The Modern Language Association of America has published *PMLA* since 1884. Modern Language Association, Publications, at <<http://www.mla.org/>> (last visited Jan. 2, 2003).

*PMLA* did not publish a single coauthored article in the 1990s, reflecting, perhaps, the extent to which scholars in these disciplines develop *very* narrow areas of specialization.<sup>24</sup> Those who study the works of an obscure writer or who focus on one passage or symbol in the work of a significant writer are unlikely to find other scholars with whom they can collaborate.

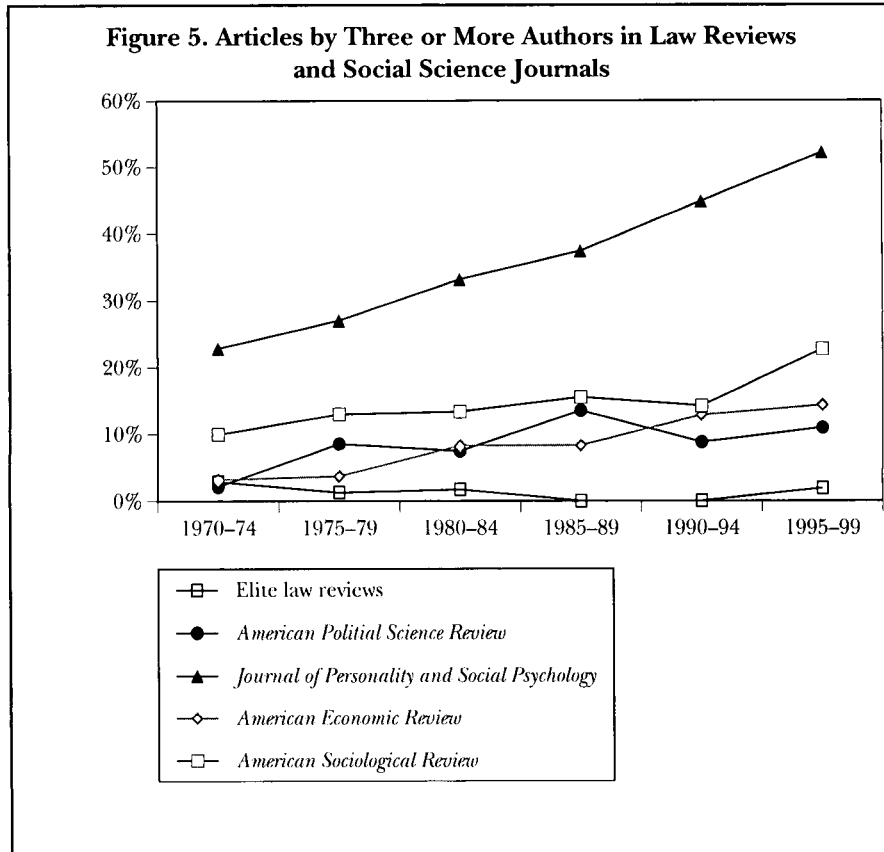
Although legal scholars collaborated more frequently than their counterparts in the humanities, they were virtually solo practitioners compared to their counterparts in the social sciences. During the period of our study, coauthorship became the dominant method of scholarly writing in leading social science journals, accounting for well over 60 percent of the articles published from 1970 through 1999 in the *American Economic Review*, *American Political Science Review*, *American Sociological Review*, and *Journal of Personality and Social Psychology*. Figure 4 demonstrates the stark contrast between law and the social sciences.



Not only were social science scholars more likely than legal scholars to collaborate, they were much more likely than legal scholars to work together in teams of three or more authors. During the period of our study, three or

24. Over the entire period, 1970-99, slightly more than 1 percent of *PMLA* articles had coauthors.

more authors wrote fewer than 3 percent of the law review articles. By contrast, roughly a quarter of social science collaborations involved three or more authors (see Figure 5); the number is much higher for data-intensive work.<sup>25</sup> From 1995 through 1999, three or more authors signed on to 14 percent of *American Economic Review* articles, 11 percent of *American Political Science Review*



articles, 23 percent of *American Sociological Review* articles, and 52 percent of *Journal of Personality and Social Psychology* articles.

Coauthorship increased in the social sciences during the period in question. All four social science journals show a demonstrable upward trend over the last three decades in the rate of collaboration (in contrast to the law reviews, which show no trend at all). During the period of our study, collaborative work

- more than doubled in the *American Economic Review* (30.5 percent in 1970-74 compared to 66.4 percent in 1995-99).

25. Social psychologists seeking to publish in *JPSA* have been required in recent years to include results from multiple experiments. This additional data work encourages collaboration by more than two authors and may explain the dramatic and steady rise in such multiauthored works as are seen in both Figures 4 and 5.

- nearly doubled in the *American Political Science Review* (23.4 percent in 1970–74 compared to 42.3 percent in 1995–99, with a high of 47.7 percent in 1985–89).
- increased to nearly two-thirds of all articles published in the *American Sociological Review* (40.2 percent in the first period, 65 percent in the last).
- reached almost 9 out of 10 articles published in the *Journal of Personality and Social Psychology* (64.2 percent in the first period, 88.8 percent in the last).

Our data on the rate of collaboration in other disciplines are illuminating. During the last three decades of the twentieth century, collaborative work occupied roughly 15 percent of the publication slots in elite and non-elite law reviews. Although the rate of collaboration in legal scholarship was about four times the rate in humanities, it was only one-fourth the rate of collaboration in social science journals. Six out of every ten social science articles were the product of collaboration, but only one or two out of every ten law review articles were by coauthors. In short, collaboration has been an aberration in legal scholarship, accounting for a relatively insignificant fraction of the scholarly works published.

### *C. The Impact of Collaboration in Legal Scholarship*

Of course the rate of collaboration tells only part of the story. Even if collaboration has occurred relatively infrequently, collaborative works may have been disproportionately influential in the development of legal thought. In fact, however, it appears that the opposite is true.

Assessing the impact of a scholarly article is no easy task. Nonetheless, scholars have adopted citation counts as the conventional method of measuring the impact of scholarly articles on future generations of law and legal scholarship.<sup>26</sup> We have previously argued that citation-count studies are far from perfect,<sup>27</sup> but they are widely accepted, are commonly employed, and provide one meaningful indication, however incomplete, of the influence articles have had on the development of legal thought. (They have also been used to measure the prestige of law reviews,<sup>28</sup> the impact of law faculty and law schools,<sup>29</sup> and the impact of judges.<sup>30</sup>)

From 1985 to 1997 scholars conducted four comprehensive citation-count studies to identify law review articles that have had the greatest impact on legal scholarship. Because coauthored articles accounted for roughly 15 percent of the articles published in the law reviews during this period, we would expect

26. For a variant on citation-count methodology, see Krier & Schwab, *supra* note 8, at 2131–34.

27. Tracey George & Chris Guthrie, An Empirical Evaluation of Specialized Law Reviews, 26 Fla. St. U. L. Rev. 813 (1999).

28. See, e.g., Colleen M. Cullen & S. Randall Kalberg, Chicago-Kent Law Review Faculty Scholarship Survey, 70 Chi.-Kent L. Rev. 1445 (1995).

29. See, e.g., Brian Leiter, Measuring the Academic Distinction of Law Faculties, 29 J. Legal Stud. 451 (2000).

30. See, e.g., William M. Landes et al., Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges, 27 J. Legal Stud. 271 (1998).

15 percent of the most influential articles to be the product of collaborations. In fact, however, only 4 to 11 percent of the most influential articles were by coauthors. In other words, coauthored articles have had a smaller impact than their numbers would suggest.

Fred R. Shapiro published the first comprehensive citation-count study in 1985.<sup>31</sup> Relying on Shepard's Law Review Citations, he attempted to identify the most influential articles published from 1947 to 1985, though he observed that "articles published after 1977 had not had enough time to amass sufficient citations to qualify" for this ranking.<sup>32</sup> In his initial study he ranked the top 50 law review articles and found that only two of them, or 4 percent, were by coauthors, as reflected in Table 1.

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**Table 1**  
**Coauthored Articles Among 50 Most Cited in Shepard's, 1947–85<sup>a</sup>**

*Rank*

- |    |  |
|----|--|
| 6  | Joseph Tussman & Jacobus tenBroeck, <i>The Equal Protection of the Laws</i> , 37 <i>California Law Review</i> 341 (1949)   |
| 22 | Guido Calabresi & A. Douglas Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 <i>Harvard Law Review</i> 1089 (1972) |

<sup>a</sup>Shapiro, *supra* note 31, at 1549–51 and Table 1. With respect to his 1996 list, Shapiro observes that "the SSCI's citing coverage does have a commencement date of 1956, i.e., citations in pre-1956 journals are not counted, so pre-1956 articles are disfavored in this respect." Moreover, Shapiro asserts that "it is too early for data for years subsequent to 1991 to be meaningful." Shapiro, *supra* note 32, at 756–57. Thus, the first ranking reflects the influence of articles published between 1947 and 1977, and the second ranking reflects publications through 1991, though it disfavors pre-1956 publications.

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Eleven years later Shapiro conducted two more citation-count studies, which he reported in a symposium article published in the *Chicago-Kent Law Review*. This time he used the Social Sciences Citation Index rather than Shepard's to rank the 100 most-cited legal articles, and he also reported the 10 most-cited articles published in each year from 1982 through 1991.

In his top-100 (and ties) list, Shapiro found that 11 of the 102 articles, or 10.8 percent of the total, were by coauthors, as set forth in Table 2.<sup>33</sup> The two coauthored articles that appeared in Shapiro's 1985 top-50 list—the Tussman & tenBroeck equal protection article and the Calabresi & Melamed property/liability rules article—also appeared on the 1996 top-100 list.

Recognizing that the top-100 list would "not fully represent recent articles because even a very high-impact article will take a half-dozen or more years to reach the threshold level of citations," Shapiro separately ranked the 10 most influential articles published each year from 1982 to 1991.<sup>34</sup> Although he found that 2 of the 12 most influential articles published in 1982 and 2 of the 10 most influential published in 1984 were by coauthors, only 9 of the top 103 articles published during this ten-year period, or 8.7 percent, were collaborative, as reflected in Table 3.

31. *The Most-Cited Law Review Articles*, 73 *Cal. L. Rev.* 1540 (1985).

32. Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 *Chi.-Kent L. Rev.* 751, 756 (1996).

33. *Id.* at 767–71 and Table 1.

34. *Id.* at 757.

**Table 2**  
**Coauthored Articles Among 100 Most Cited in SSCI, 1888–1991<sup>a</sup>**

<i>Rank</i>	
9	Samuel D. Warren & Louis D. Brandeis, <i>The Right to Privacy</i> , 4 <i>Harvard Law Review</i> 193 (1890)
11	Guido Calabresi & A. Douglas Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 <i>Harvard Law Review</i> 1089 (1972)
14	Joseph Tussman & Jacobus tenBroeck, <i>The Equal Protection of the Laws</i> , 37 <i>California Law Review</i> 341 (1949)
23	Robert H. Mnookin & Lewis Kornhauser, <i>Bargaining in the Shadow of the Law: The Case of Divorce</i> , 88 <i>Yale Law Journal</i> 950 (1979)
24	Frank H. Easterbrook & Daniel R. Fischel, <i>The Proper Role of a Target's Management in Responding to a Tender Offer</i> , 94 <i>Harvard Law Review</i> 1161 (1981)
35	Bruce J. Ennis & Thomas R. Litwack, <i>Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom</i> , 62 <i>California Law Review</i> 693 (1974)
43	Lon L. Fuller & William R. Perdue, <i>The Reliance Interest in Contract Damages</i> (pts. 1 & 2), 46 <i>Yale Law Journal</i> 52, 373 (1936–37)
81	Alexander M. Bickel & Harry H. Wellington, <i>Legislative Purpose and the Judicial Process: The Lincoln Mills Case</i> , 71 <i>Harvard Law Review</i> 1 (1957)
87	Guido Calabresi & Jon T. Hirschoff, <i>Toward a Test for Strict Liability in Torts</i> , 81 <i>Yale Law Journal</i> 1055 (1972)
89	Philip Areeda & Donald F. Turner, <i>Predatory Pricing and Related Practices Under Section 2 of the Sherman Act</i> , 88 <i>Harvard Law Review</i> 697 (1975)
99	George L. Priest & Benjamin Klein, <i>The Selection of Disputes for Litigation</i> , 13 <i>Journal of Legal Studies</i> 1 (1984)

<sup>a</sup>Shapiro, *supra* note 32, at 767–71 and Table 1.

**Table 3**  
**Coauthored Articles Among 10 Most-Cited Articles**  
**Published Each Year, 1982–91<sup>a</sup>**

<i>Rank</i>	
1982	2 Frank H. Easterbrook & Daniel R. Fischel, <i>Corporate Control Transactions</i> , 91 <i>Yale Law Journal</i> 698 (1982)
1982	6 Richard B. Stewart & Cass R. Sunstein, <i>Public Programs and Private Rights</i> , 95 <i>Harvard Law Review</i> 1193 (1982)
1983	9 Frank H. Easterbrook & Daniel R. Fischel, <i>Voting in Corporate Law</i> , 26 <i>Journal of Law &amp; Economics</i> 395 (1983)
1984	2 George L. Priest & Benjamin Klein, <i>The Selection of Disputes for Litigation</i> , 13 <i>Journal of Legal Studies</i> 1 (1984) <sup>b1</sup>
1984	10 Ronald J. Gilson & Reinier H. Kraakman, <i>The Mechanisms of Market Efficiency</i> , 70 <i>Virginia Law Review</i> 549 (1984)
1987	10 Daniel A. Farber & Philip B. Frickey, <i>The Jurisprudence of Public Choice</i> , 65 <i>Texas Law Review</i> 873 (1987)
1989	6 Ian Ayres & Robert Gertner, <i>Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules</i> , 99 <i>Yale Law Journal</i> 87 (1989)
1990	5 William N. Eskridge Jr. & Philip P. Frickey, <i>Statutory Interpretation as Practical Reasoning</i> , 42 <i>Stanford Law Review</i> 321 (1990)
1991	8 Ronald J. Gilson & Reinier Kraakman, <i>Reinventing the Outside Director: An Agenda for Institutional Investors</i> , 43 <i>Stanford Law Review</i> 863 (1991)

<sup>a</sup>Shapiro, *supra* note 32, at 773–77 and Table II.

<sup>b</sup>It is worth noting that the Priest and Klein article made Shapiro's top-100 list despite its recent (at the time) publication date.

In the most recent citation-count study of law review articles—published, ironically, in a symposium devoted to a collaborative article<sup>35</sup>—James Krier and Stewart Schwab used Westlaw’s online database of law reviews (JLR) to evaluate all 191 articles listed in Shapiro’s 1996 study. Krier and Schwab argued that the JLR database provides a better measure than SSCI because JLR, as part of a legal data service, is “tailored to law” and, as a constantly updated database, provides a better measure of the “recent impact” of an article.<sup>36</sup> Although the relative ranking of the various articles shifted, the percentage by coauthors did not: as listed in Table 4, Krier and Schwab found that only 10 of the top 100 law review articles in their study, or 10 percent, were by coauthors—a finding consistent with Shapiro’s.

**Table 4**  
**Coauthored Articles Among 100 Most Cited in JLR (Shapiro’s list)<sup>a</sup>**

Rank	
12	Frank H. Easterbrook & Daniel R. Fischel, <i>The Proper Role of a Target’s Management in Responding to a Tender Offer</i> , 94 <i>Harvard Law Review</i> 1161 (1981)
14	Guido Calabresi & A. Douglas Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 <i>Harvard Law Review</i> 1089 (1972)
20	Samuel D. Warren & Louis D. Brandeis, <i>The Right to Privacy</i> , 4 <i>Harvard Law Review</i> 193 (1890)
44	Robert H. Mnookin & Lewis Kornhauser, <i>Bargaining in the Shadow of the Law: The Case of Divorce</i> , 88 <i>Yale Law Journal</i> 950 (1979)
47	Ronald J. Gilson & Reinier H. Kraakman, <i>The Mechanisms of Market Efficiency</i> , 70 <i>Virginia Law Review</i> 549 (1984)
60	Frank H. Easterbrook & Daniel R. Fischel, <i>Corporate Control Transactions</i> , 91 <i>Yale Law Journal</i> 698 (1982)
81	George L. Priest & Benjamin Klein, <i>The Selection of Disputes for Litigation</i> , 13 <i>Journal of Legal Studies</i> 1 (1984)
88	Philip Areeda & Donald F. Turner, <i>Predatory Pricing and Related Practices Under Section 2 of the Sherman Act</i> , 88 <i>Harvard Law Review</i> 697 (1975)
90	Daniel A. Farber & Philip P. Frickey, <i>The Jurisprudence of Public Choice</i> , 65 <i>Texas Law Review</i> 873 (1987)
92	Lon L. Fuller & William R. Perdue, <i>The Reliance Interest in Contract Damages (pts. 1 &amp; 2)</i> , 46 <i>Yale Law Journal</i> 52, 373 (1936–37)

<sup>a</sup>Krier & Schwab, *supra* note 8, at 2139–47, Appendix II.

Collectively, the comprehensive citation-count studies demonstrate that articles by coauthors have had less impact than we would have expected given the rate at which coauthored articles have been published. We found that roughly 15 percent of the articles published in the elite and non-elite journals during the period of our study were by coauthors, as compared to 8.4 percent of the top articles appearing in the citation-count studies. Although scholars conducting limited citation-count studies have found that coauthored articles have been more influential—Shapiro found that 20 percent of the top 30 articles published in the *Yale Law Journal* were coauthored,<sup>37</sup> and Deborah J.

35. Calabresi & Melamed, *supra* note 4.

36. Krier & Schwab, *supra* note 8, at 2124, 2125.

37. Fred R. Shapiro, *The Most-Cited Articles from The Yale Law Journal*, 100 *Yale L.J.* 1449, 1462–63, Table I (1991).

Merritt and Melanie Putnam found that 40 percent of the 30 articles published in 1989 through 1991 that were most heavily cited by *courts* were coauthored<sup>38</sup>—scholars who have attempted to assess the overall impact of scholarship *on scholarship* have found that coauthored works on the whole have been relatively inconsequential in the development of legal thought.

## II. The Future of Collaboration

During the last three decades of the twentieth century, legal scholarship witnessed few collaborations—roughly 15 percent of all articles had coauthors—and even fewer *influential* collaborations—less than 10 percent of the most influential articles. At the same time, the social science disciplines with which law and legal scholarship so often intersect saw a veritable explosion in collaborative work, with the rate of coauthorship exceeding 65 percent in leading economics, psychology, and sociology journals. In the most recent year for which data are available (2000), the rate of coauthorship was 68 percent in the *American Economic Review*, 67 percent in the *American Sociological Review*, 92 percent in the *Journal of Personality and Social Psychology*, a still substantial 48 percent in the *American Political Science Review*, and a paltry 21.7 percent in our five elite law journals.<sup>39</sup>

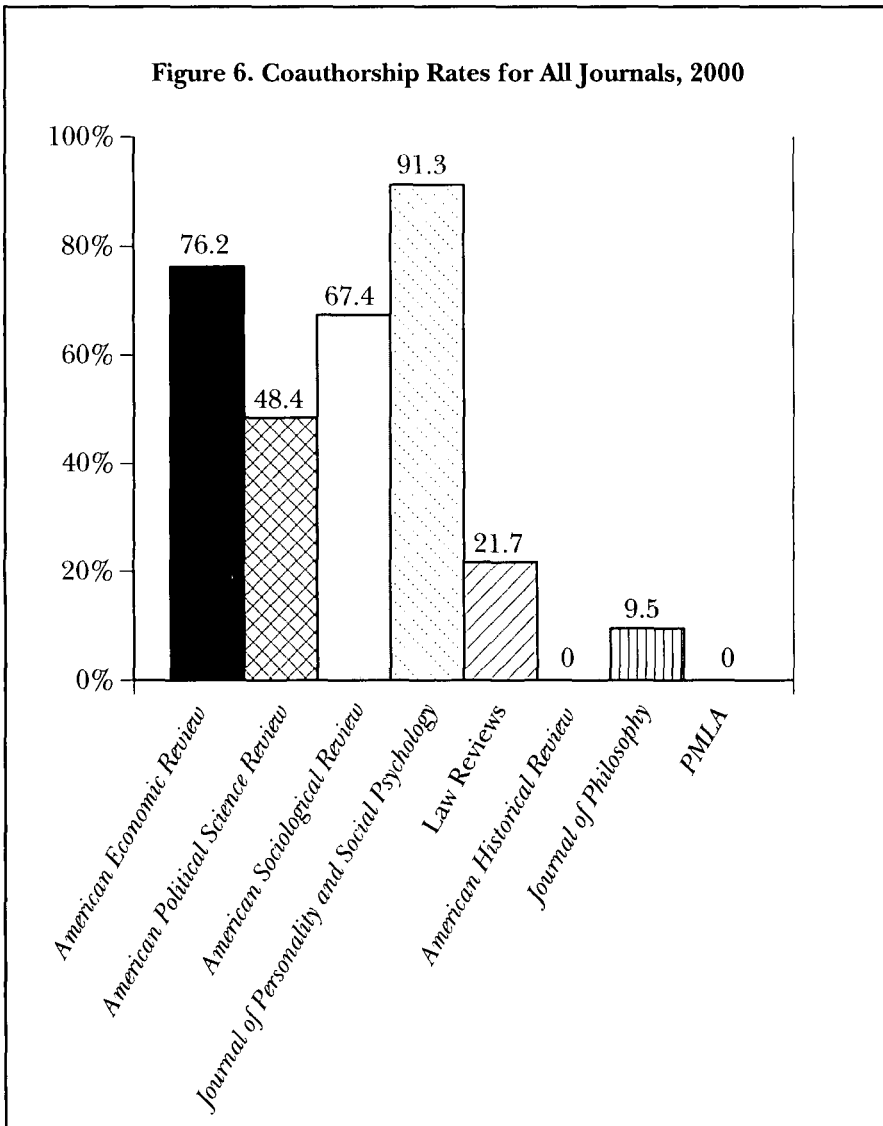
The best available evidence suggests that collaborative legal scholarship will remain a bit player in legal academia. Because the rate of collaboration has been relatively constant in law, it would seem a safe bet that it will remain below 20 percent. Nonetheless, our skepticism about the future of collaboration in legal scholarship is tempered by some promising signs. Although we do not expect collaborative work to become as common and influential as it is in the social sciences, we believe that the rate of collaboration in law, and its impact on legal scholarship, may increase in the near future.

The first sign that collaboration is on the rise comes from the citation-count studies that we earlier used to demonstrate that collaborative work has had a minimal impact on legal scholarship. Although coauthored articles are underrepresented on these lists of the most influential articles, they figure more prominently in the more recent citation-count studies than they did in the earliest of them. In Shapiro's initial 1985 study only 4 percent of the articles were by coauthors; in the three more recent studies, however, coauthored articles made up 8.7 to 10.8 percent of the most influential articles. In other words, coauthored articles more than doubled their presence on these top-articles lists from 1985 to the late 1990s.

38. Judges and Scholars: Do Courts and Scholarly Journals Cite the Same Law Review Articles? 71 *Chi.-Kent L. Rev.* 871, 892 (1996).

39. Our percentage is dramatically different from the 5 percent found by Epstein and King for these five journals plus NYU in 2000. See Lee Epstein & Gary King, *The Rules of Inference*, 69 *U. Chi. L. Rev.* 1, 47–48 (2002). Although we appear to define "article" in the same way as Epstein and King, there are several possible explanations for the disparity: a different definition of year (Epstein and King coded by calendar year whereas we coded by volume year), the fact that NYU published a lot of articles but no coauthored ones in 2000, and/or coding error. The different findings underscore the problems of focusing on a single year as representative.





Even more telling, perhaps, is a comparison of Shapiro’s top-50 list in 1985 to the top 50 articles in his 1996 list (his 1996 list included the top 100 articles and ties). In his initial study Shapiro found that only 2 coauthored articles were among the 50 most influential: the Tussman & tenBroeck equal protection article and the Calabresi & Melamed property rules/liability rules article.<sup>40</sup> In 1996 both of those articles *plus* 5 others appeared in the top 50.<sup>41</sup> In other words, the rate of coauthored articles among the top 50 most influential works more than tripled, rising from 4 percent in 1985 to 14 percent in 1996.

40. Shapiro, *supra* note 31, at 1549–50 Table I.

41. Shapiro, *supra* note 32, at 766–87 Tables I and II.

Some of this reflects the different databases Shapiro used. If he had used Shepard's again in 1996 (rather than SSCI), two of the articles that made his top 50 in 1996—the 1890 Warren & Brandeis article on privacy rights and the 1936–37 Fuller & Perdue article on reliance damages—would not have made the list because they predate the scope of that database.<sup>42</sup> But even with the limited scope of Shepard's, the representation of coauthored articles would have more than doubled due to the inclusion and influence of three more recently published coauthored works—the 1974 Ennis & Litwack article on psychiatric experts, the 1979 Mnookin & Kornhauser article on bargaining, and the 1981 Easterbrook & Fischel article on tender offers.<sup>43</sup>

Additional evidence of the growing influence of coauthored works comes from a recent study by Ian Ayres and Fredrick E. Vars. They conducted a citation-count study of articles published in the Harvard, Stanford, and Yale law reviews from 1980 to 1995, in which they attempted to identify factors that resulted in high and low citation counts. Among other things, they found that “[c]oauthored articles were cited more frequently than single-author pieces,” though they also found that articles written by three or more authors were cited much less frequently than single-author pieces.<sup>44</sup>

The second reason we believe that collaboration is on an upward trajectory is that coauthorship is common among faculty who serve as *role-model scholars*. At various levels of consciousness, nearly all law teachers—particularly those new to the academy—look to other members of the profession as role models. Although many legal scholars will follow the example set by leading members of their own faculty, most will also look beyond their school to the broader legal academy. A very few scholars, maybe .5 to 1 percent of all law professors (something like 35 to 70 people), are visible enough and prominent enough to serve as role models for the broader community.<sup>45</sup>

Determining who is—and perhaps more controversially, who isn't—a role-model scholar is not easy. Here again legal scholars have turned to citation-count studies to identify not only the most influential articles but also the most influential legal scholars. In a recent *Journal of Legal Studies* symposium devoted to citation counts, two people conducted citation-count studies of legal scholars. Shapiro constructed a list of the 50 most-cited legal scholars based on

42. See Shapiro, *supra* note 31, at 1545.

43. Because each of these articles had interdisciplinary appeal, they may also have benefited from Shapiro's switch from JLR to SSCI.

44. Determinants of Citations to Articles in Elite Law Reviews, 29 J. Legal Stud. 427, 439, 446 Table 3 (2000). The number of articles with three or more authors must have been very small, making it harder to draw absolute conclusions even in a multivariate analysis.

45. In 2000–01 the 184 ABA-approved law schools employed 6,787 professors. See Association of American Law Schools, Statistical Report on Law School Faculty and Candidates for Law Faculty Positions: 1999–2000 <<http://www.aals.org/statistics/index.html#full>> (last visited Jan. 2, 2003), and tbl.1A <<http://www.aals.org/statistics/T1A.htm>> (last visited Jan. 2, 2003). This number excludes lecturers, instructors, visiting professors, professors emeriti, and administrators without professorial appointments.

SSCI citations from 1956 to 1999,<sup>46</sup> while Brian Leiter produced a top-50 list using the JLR database on Westlaw.<sup>47</sup> There is significant overlap between the two lists—more than a third of the scholars who appear on one also appear on the other<sup>48</sup>—but the Leiter list provides greater insight into *current* role-model legal scholars because it includes only active law teachers (at least as of 1998). Shapiro’s list, by contrast, includes many former teachers who have retired, accepted judicial positions, or died (roughly 60 percent of his top 50). Table 5 identifies Leiter’s top 50 and their rank.

We conducted two searches, one using LegalTrac and one using JLR, to determine how many of these role-model scholars have coauthored scholarly articles. We found that 40 of the top 50 most-cited law faculty, or 80 percent, have written collaborative articles. Given that Leiter’s list excludes three of the most prominent collaborators of our time because they are now judges rather than regular faculty—namely, Guido Calabresi, Frank Easterbrook, and Richard Posner—the actual percentage of role-model scholars who have produced collaborative scholarship is probably higher. Although some of them have collaborated infrequently, many have made collaboration a central part of their careers.<sup>49</sup>

**Table 5**  
**Fifty Most-Cited Legal Scholars (Living in 1999)<sup>a</sup>**

1 Laurence Tribe	14 Richard Delgado	26 Martin Redish	39 Charles Lawrence
2 Cass Sunstein	14 Catharine MacKinnon	28 William Landes	40 Geoffrey Miller
3 Richard Epstein	16 Martha Minow	28 Sanford Levinson	41 Morton H orwitz
4 Ronald Dworkin	17 Ronald Rotunda	28 Deborah Rhode	42 Mary Ann Glendon
5 John Hart Ely	18 Duncan Kennedy	31 Mari Matsuda	43 Peter Schuck
6 Mark Tushnet	19 Geoffrey Hazard	31 Michael McConnell	44 Michael Perry
6 Charles Alan Wright	19 John Nowak	33 Richard Stewart	44 Patricia Williams
8 Bruce Ackerman	21 John Coffee	34 Paul Brest	46 Anthony Kronman
9 Daniel Farber	22 Akhil Amar	35 Robin West	47 Douglas Laycock
10 William Eskridge	23 Jonathan Macey	36 Kathleen Sullivan	47 Margaret Jane Radin
11 Owen Fiss	24 Lawrence Friedman	37 Erwin Chemerinsky	47 Geoffrey Stone
12 Frank Michelman	25 Philip Frickey	38 Kenneth Karst	50 Alexander Aleinikoff
12 Arthur Miller	26 Daniel Fischel		

<sup>a</sup>Leiter, *supra* note 29, at 472 Table 6.

46. Fred R. Shapiro, The Most-Cited Legal Scholars, 29 J. Legal Stud. 409 (2000).

47. Leiter, *supra* note 29.

48. Bruce Ackerman, Paul Brest, Ronald Dworkin, John Hart Ely, Richard Epstein, Daniel Farber, Owen Fiss, Lawrence Friedman, Geoffrey Hazard, Kenneth Karst, Duncan Kennedy, William Landes, Frank Michelman, Richard Stewart, Cass Sunstein, and Mark Tushnet appear on both lists.

49. Lindgren and Seltzer studied the most prolific law teachers and faculties during a five-year period (1988–92) in the 20 most-cited law reviews. See James Lindgren & Daniel Seltzer, The Most Prolific Law Professors and Faculties, 71 Chi.-Kent L. Rev. 781 (1996). They gave only partial credit for coauthored articles, yet the majority of the most prolific have been coauthors. Four of the five most prolific authors in Lindgren and Seltzer’s study have actively collaborated.

Collaboration is even more common among prominent younger scholars (many of whom also qualify as role-model scholars). Recognizing that age is correlated with citation count, Shapiro created, in addition to his 50-most-cited-scholars list, two lists identifying the most-cited “younger scholars,” those 50 years old or younger and those 40 years old or younger (see Table 6).

**Table 6**  
**Most-Cited Younger Scholars (birth year in parentheses)<sup>a</sup>**

<i>Scholars age 50 or younger as of 1998</i>		
1 Cass Sunstein (1954)	4 A. Mitchell Polinsky (1948)	7 Jonathan Macey (1955)
2 Frank Easterbrook (1948)	5 Daniel R. Fischel (1950)	8 Martha Minow (1954)
3 Daniel Farber (1950)	6 William Eskridge (1951)	9 Akhil Amar (1958)
		10 Lewis Kornhauser (1950)
<i>Scholars age 40 or younger as of 1998</i>		
1 Akhil Amar (1958)	3 Kimberle Crenshaw (1959)	5 Angela Harris (1961)
2 Ian Ayres (1959)	4 Kathryn Abrams (1958)	

<sup>a</sup>Shapiro, *supra* note 46, at 424-25, Table 6.

This is a collaborative bunch: ten of the fifteen younger scholars *actively* collaborate. In the past three years alone, for example, Cass Sunstein has collaborated with Robert Frank on one article,<sup>50</sup> with Daniel Kahneman and David Schkade on three other articles,<sup>51</sup> with Robert King on an essay,<sup>52</sup> with Christine Jolls and Richard Thaler on an article and a reply,<sup>53</sup> and with Timur Kuran on another article.<sup>54</sup> Earlier in their careers Frank Easterbrook and Daniel Fischel formed one of the most influential partnerships in legal scholarship,<sup>55</sup> and each has collaborated with others as well.<sup>56</sup> Daniel Farber and

50. Robert H. Frank & Cass R. Sunstein, *Cost-Benefit Analysis and Relative Position*, 68 U. Chi. L. Rev. 323 (2001).
51. David Schkade et al., *Deliberating About Dollars: The Severity Shift*, 100 Colum. L. Rev. 1139 (2000); Cass R. Sunstein et al., *Assessing Punitive Damages (with Notes on Cognition and Valuation in Law)*, 107 Yale L.J. 2071 (1998); Cass R. Sunstein et al., *Do People Want Optimal Deterrence?* 29 J. Legal Stud. 237 (2000).
52. Robert E. King & Cass R. Sunstein, *Doing Without Speed Limits*, 79 B.U. L. Rev. 155 (1999).
53. Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 Stan. L. Rev. 1471 (1998) [hereinafter *Behavioral Approach*]; Christine Jolls et al., *Theories and Tropes: A Reply to Posner and Kelman*, 50 Stan. L. Rev. 1593 (1998).
54. Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 Stan. L. Rev. 683 (1999).
55. For articles by Frank H. Easterbrook and Daniel R. Fischel, see, e.g., *Contract and Fiduciary Duty*, 36 J.L. & Econ. 425 (1993); *The Corporate Contract*, 89 Colum. L. Rev. 1416 (1989); *Close Corporations and Agency Costs*, 38 Stan. L. Rev. 271 (1986); *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (1985); *Optimal Damages in Securities Cases*, 52 U. Chi. L. Rev. 611 (1985); *Voting in Corporate Law*, 26 J.L. & Econ. 395 (1983); *Antitrust Suits by Targets of Tender Offers*, 80 Mich. L. Rev. 1155 (1982); *Auctions and Sunk Costs in Tender Offers*, 35 Stan. L. Rev. 1 (1982); *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 Harv. L. Rev. 1161 (1981). For books, see *The Economic Structure of Corporate Law* (Cambridge, Mass., 1991).
56. See, e.g., Frank H. Easterbrook & Gregg A. Jarrell, *Do Targets Gain from Defeating Tender Offers?* 59 N.Y.U. L. Rev. 277 (1984); Frank H. Easterbrook, William M. Landes, & Richard A. Posner, *Contribution Among Antitrust Defendants: A Legal and Economic Analysis*, 23 J.L. & Econ. 331 (1980); Daniel R. Fischel & Alan O. Sykes, *Corporate Crime*, 25 J. Legal Stud. 319

Philip Frickey have produced several works on public choice theory,<sup>57</sup> and each has separately become well known for collaborations with other prominent scholars, Suzanna Sherry and William Eskridge, respectively.<sup>58</sup> And Ian Ayres has coauthored more than a third of his law review articles.<sup>59</sup> Although none of the other five scholars—Kathryn Abrams, Akhil Amar, Kimberle Crenshaw, Angela Harris, and Martha Minow—is an active collaborator, each has participated in collaborative scholarship.<sup>60</sup> On balance, then, these leading younger scholars—who are poised to chart the development of legal scholarship during at least the next two decades—collaborate frequently and with multiple scholars. Collaboration appears to be one of the primary ways these intellectual leaders participate in scholarly dialog.

Collaboration also seems to be important to the junior legal scholars whose influence is only beginning to be felt in the academy. We looked at professors of any rank who are at top 20 law schools (other than our own schools, Northwestern and Vanderbilt), took their first permanent teaching position within the last ten years, and have written at least ten articles. We found that many are active collaborators (with at least one-third of their articles coauthored). Table 7 includes a baker's dozen of these prominent junior scholars.

(1996); Daniel R. Fischel & Alan O. Sykes, *Civil RICO After Reves: An Economic Commentary*, 1993 S. Ct. Rev. 157; Daniel R. Fischel & David J. Ross, *Should the Law Prohibit "Manipulation" in Financial Markets?* 105 Harv. L. Rev. 503 (1991).

57. For works by Daniel A. Farber & Philip P. Frickey, see, e.g., *Legislative Intent and Public Choice*, 74 Va. L. Rev. 423 (1988); *The Jurisprudence of Public Choice*, 65 Tex. L. Rev. 873 (1987); *Law and Public Choice: A Critical Introduction* (Chicago, 1991).
58. For works by Daniel A. Farber and Suzanna Sherry, see, e.g., Farber & Sherry, *supra* note 6; *Beyond All Reason: The Radical Assault on Truth in American Law* (New York, 1997); *Beyond All Criticism?* 83 Minn. L. Rev. 1735 (1999); *The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth*, 46 Stan. L. Rev. 647 (1994). For works by William N. Eskridge Jr. and Philip P. Frickey, see, e.g., Henry M. Hart Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, eds. William N. Eskridge & Philip P. Frickey (Westbury, 1994); *Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking*, 45 Vand. L. Rev. 593 (1992); *Statutory Interpretation as Practical Reasoning*, 42 Stan. L. Rev. 321 (1990); *Legislation Scholarship and Pedagogy in the Post-Legal Process Era*, 48 U. Pitt. L. Rev. 691 (1987).
59. A LegalTrac search found 61 articles by Ayres, 22 of which were coauthored. A search of the JLR database in Westlaw uncovered 52 articles, of which 23 were coauthored. One of the most cited articles of recent years, published when Ayres was 24 years old, is Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 Yale L.J. 87 (1983). See Shapiro, *supra* note 32, at Table II.
60. Abrams coauthored 1 of 41 LegalTrac and 32 Westlaw citations. LegalTrac found that 11 of 98 cites for Amar were coauthored, and a JLR search found that 7 of 78 citations were coauthored. A LegalTrac search found that 1 of Crenshaw's 7 publications was coauthored, while a Westlaw search uncovered 1 of 8. A LegalTrac search found 2 of Harris's 16 cites were coauthored, while a Westlaw search uncovered 2 of 15. A LegalTrac search revealed that 2 of 76 cites for Minow were coauthored, while a search of the JLR database found that 1 of Minow's 58 citations was coauthored.

**Table 7**  
**A Sample of Prominent Junior Scholars Who Actively Collaborate**

		<i>First post<sup>a</sup></i>	<i>Coauthorship rate</i>
Steve Croley	Michigan	1993	38%
Jack Goldsmith	Chicago	1993	57
Mitu Gulati	Georgetown	1997	88
Jon Hanson	Harvard	1992	100
Michael Heller	NYU	1994	58
Christine Jolls	Harvard	1994	33
Russell Korobkin	UCLA	1996	33
Mark A. Lemley	California-Berkeley	1994	49
Tracey Meares	Chicago	1994	36
Eric Posner	Chicago	1993	36
Adam Pritchard	Michigan	1998	67
Jeff Rachlinski	Cornell	1994	35
Eric Talley	USC	1995	40

<sup>a</sup>We recorded the year of each scholar's first permanent full-time faculty post using the AALS Directory.

This illustrative, though by no means exhaustive, list demonstrates that collaboration has already begun to play a significant role in the work of the next generation of leading legal scholars. Because age is positively correlated with citation count, the available citation-count studies do not yet show the influence of their collaborations. But the legal academy feels their effect, and new faculty will look to them as examples.<sup>61</sup>

Finally, legal scholarship is becoming increasingly interdisciplinary, empirical, and international. These trends suggest that collaboration will become more common, as legal scholars reach out to those with complementary training, from other departments, and from other countries.

### III. Prescriptions

Collaboration in legal scholarship has been relatively stagnant in the past, but there are reasons to believe that it might be on the rise. This is good news for the legal academy because collaborative work is an especially valuable form of scholarship. And the topic is not merely academic. In recent years prominent legal scholars, judges, and lawyers have vigorously debated the relevance

61. In July 2002 we ran JLR database citation counts on a handful of coauthored articles by these scholars. Talley's article with Ian Ayres in 1995 has been cited 115 times. Ian Ayres & Eric Talley, *Solomonic Bargaining: Dividing a Legal Entitlement to Facilitate Coasean Trade*, 104 *Yale L.J.* 1027 (1995). Jon Hanson's articles written with two other leading junior scholars have been cited frequently (76 citations of Steven P. Croley & Jon D. Hanson, *The Nonpecuniary Costs of Accidents: Pain-and-Suffering Damages in Tort Law*, 108 *Harv. L. Rev.* 1785 (1995); 72 citations of Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 *N.Y.U. L. Rev.* 630 (1999)). Christine Jolls's article with Sunstein and Thaler, published in 1998, already has collected 207 citations. Jolls et al., *Behavioral Approach*, *supra* note 53. Russell Korobkin's article with Ulen that was published in 2000 has already been cited 64 times. Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 *Cal. L. Rev.* 1051 (2000). To put these numbers in some context, these articles would likely be among the top 10 published in their respective years if results in previous studies are any indication.

of legal scholarship. Some have argued that “judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the [legal] academy.”<sup>62</sup> Others have defended legal scholarship, contending that “a good deal of the scholarship that [such critics] believe[] is irrelevant to the professional enterprise is practically useful.”<sup>63</sup>

Scholars on both sides of the debate have ignored collaborative legal scholarship, yet it offers unique academic and practical benefits. It enables law faculty to partner with students, other legal scholars, colleagues in other disciplines, and colleagues outside academia altogether. Collaboration with students provides uncommon pedagogical benefits and may spawn promising academic careers. Collaboration with other law teachers strengthens relationships within and between law faculties. Collaboration with academics from other disciplines brings nonlegal scholars’ ideas and methodologies into legal scholarship, increases the likelihood that law faculty will produce empirical, interdisciplinary work, and improves the standing of legal academia in the broader academic community. Collaboration with judges, practicing lawyers, and other nonacademics produces scholarship that reflects both theoretical and real-world insights. All these collaborations hold the promise of producing better scholarship, better scholars, and better law schools.

Because collaborative work has so much to offer, we believe that the legal academy should embrace and encourage what we perceive to be a potential upward trend in rates of collaboration. We believe that the ABA Council of the Section of Legal Education, the AALS, individual law schools, and even law reviews can all take steps to further collaboration in legal scholarship.

#### *A. Accreditation Standards*

The American Bar Association’s Council of the Section of Legal Education promulgates standards that law schools must meet to retain accreditation. Most of the standards “are stated as ‘shall’ or ‘must’ rules,” but there are some “should” rules. “If the Accreditation Committee finds during an inspection that a law school is not complying with a ‘should’ rule,” the standards provide that the committee “may note that as a matter of concern in its action letter” to the institution.<sup>64</sup>

ABA Standard 404(a) requires law schools to establish policies that address “research and scholarship, and integrity in the conduct of scholarship, including appropriate use of student research assistants, acknowledgment of the contributions of others, and responsibility of faculty members to keep abreast of developments in their specialties.” The ABA requires law schools to “evalu-

62. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34, 35 (1992).

63. Robert W. Gordon, *Lawyers, Scholars, and the “Middle Ground,”* 91 Mich. L. Rev. 2075, 2077 (1993).

64. Foreword to the ABA Standards, <<http://www.abanet.org/legalcd/standards/foreword.html>> (last visited Jan. 2, 2003).

ate periodically the extent to which all faculty members discharge their responsibilities under policies adopted pursuant to Standard 404(a).<sup>65</sup>

We recommend that the ABA adopt a “should” rule governing collaborative scholarship. Specifically, we recommend that the ABA revise Standard 404(a) to provide that law schools should establish policies that explain how the school will treat collaborative scholarship in the tenure and promotion processes, and encourage law schools to provide incentives for faculty to engage in collaborative scholarship. If the ABA Standards specifically endorsed collaborative work, law schools would be inclined to pay attention (at least during the reaccreditation process every seven years).

### *B. External Incentives and Rewards*

The Association of American Law Schools and other organizations with an interest in the legal academy encourage and reward certain types of legal scholarship. The AALS, for example, provides an annual award to the junior legal scholar who has written the best article. *Corporate Practice Commentator* ranks the top ten corporate and securities articles every year. The CPR Institute for Dispute Resolution presents an award each year to the scholar who has written the top dispute resolution article. We recommend that the AALS or some other entity with an interest in legal scholarship—e.g., the American Bar Foundation—establish an award recognizing the top collaborative article(s) published each year.

### *C. Law School Incentives, Rewards, and Scholarly Environment*

Law schools, which often appear merely to tolerate collaborative scholarship, have an especially important role to play. Most significantly, they should treat coauthorship more favorably than they do now in tenure and promotion processes. This means giving faculty the same or nearly the same credit for projects with coauthors as they would receive for work done alone. At present law schools often give an author half credit or less for a coauthored work even though most authors think that collaboration takes much more than 50 percent of the time needed to complete a solo project. By treating collaborative scholarship more favorably, law schools will remove a significant impediment to collaborative work, at least among relatively junior scholars who are candidates for tenure and promotion.

Law schools should also take steps to create a scholarly environment in which faculty actively seek to work together on collaborative projects. Creating this kind of environment is not necessarily an easy task, but we believe law schools can take several concrete steps.

First, they might try to emulate the University of Chicago’s intellectual environment (recognizing, of course, that some aspects of the Chicago approach may not translate well to other schools). Many prominent members of the Chicago faculty—for example, Easterbrook, Fischel, Landes, Meares, the

65. ABA Standard 404(a)(2), <<http://www.abanet.org/legaled/standards/chapter4.html>> (last visited Jan. 2, 2003).



Posners, and Sunstein—actively collaborate. Although we would expect them to continue collaborative work even if they moved on to other jobs (indeed, Judges Easterbrook and Posner have), we believe that this concentration of active collaborators must reflect, in part, the scholarly environment Chicago has cultivated.

Second, law schools often sponsor workshop series on specific topics, such as legal theory, law and economics, or international law. We recommend that they establish series of colloquia or workshops that feature collaborative works in progress and involve both or all authors. These workshops might include the school's faculty, faculty from other schools, faculty from other departments, and students. The idea is to highlight and thereby encourage collaborative scholarship.

Third, law schools might adopt formal mentoring relationships between senior faculty and their junior colleagues, or between faculty and students, designed to encourage collaboration. At Northwestern, for example, third-year law students can work on a senior research project under the direction of a faculty member. These projects have on occasion become coauthored articles published in leading journals. Moreover, and more importantly, these students sometimes go on to become law teachers.

Fourth, law schools—particularly the elite schools that produce most legal academics<sup>66</sup>—should encourage students to collaborate with one another (and/or with graduate students from other disciplines) on seminar papers. Many prominent junior scholars, including Steve Croley and Jon Hanson (classmates at Yale and now teachers at Michigan and Harvard respectively),<sup>67</sup> John Goldberg and Benjamin Zipursky (classmates at NYU and now teachers at Vanderbilt and Fordham respectively),<sup>68</sup> and Hanson and Kyle Logue (classmates at Yale; Logue now teaches at Michigan), began their legal academic careers with collaborative partnerships while students in law school. Yale's Student Legal Theory Workshop, for example, provides an excellent opportunity for students to begin collaborative relationships.

#### *D. Law Reviews*

Law reviews also have a role to play. First, top law reviews should make a concerted effort to publish first-rate collaborative works. It is well known that

66. Robert J. Borthwick & Jordan R. Schau, Note, Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors, 25 U. Mich. J.L. Reform 191 (1991); Donna Fossum, Law Professors: A Profile of the Teaching Branch of the Legal Profession, 1980 Am. B. Found. Res. J. 501, 528–38.

67. For articles by Steven P. Croley and Jon D. Hanson, see, e.g., What Liability Crisis? An Alternative Explanation for Recent Events in Products Liability, 8 Yale J. on Reg. 1 (1991); Rescuing the Revolution: The Revived Case for Enterprise Liability, 91 Mich. L. Rev. 683 (1993).

68. For articles by John C. P. Goldberg & Benjamin C. Zipursky, see, e.g., The Moral of MacPherson, 146 U. Pa. L. Rev. 1733 (1998); The Restatement (Third) and the Place of Duty in Negligence Law, 54 Vand. L. Rev. 657 (2001); Concern for Cause: A Comment on the Twerski-Sebok Plan for Administering Negligent Marketing Claims Against Gun Manufacturers, 32 Conn. L. Rev. 1411 (2000).

articles editors seek signals that help them make good publication decisions. Often, for example, they are influenced by the institutional affiliations of the authors who submit articles to them. Similarly, they should consider that articles written by more than one author may be of higher quality than a solo piece because joint projects reflect the thinking of more than one person and ideally the synergy of complementary intellectual strengths.

Law reviews could also improve the perception of coauthored works by naming each author rather than listing only the first author when more than two scholars collaborate. This would require that law reviews abandon the Bluebook rule requiring an initial citation to list only the first author by name and additional authors as “et al.” The “et al.” usage marginalizes the contribution of multiple authors and treats coauthorship as exceptional rather than standard. Journals, as well as the Bluebook’s creators, have revised their citation practices in the past to reflect modern trends in legal scholarship. The abandonment of “et al.” would be an appropriate action in light of what we hope will be an increasing rate of coauthorship.